

REMARKS**Election/Restriction**

The Examiner has required restriction to one of the following inventions under 35 U.S.C. 121:

- Group I: Claims 1-17 and 36-38, drawn to isolated nucleic acids, vectors, and host cells, and a method for producing a polypeptide classified in class 536, subclass 23.1, class 435, subclass 320.1, and class 435, subclass 325;
- Group II: Claims 18-24, drawn to an isolated polypeptide, classified in class 530, subclass 300, for example;
- Group III: Claims 25-34, drawn to a method for producing a fine chemical, classification dependent on fine chemical; and
- Group IV: Claim 35 drawn to a method of diagnosing the presence of *Corynebacterium diphtheriae* in a subject, classified in class 435, subclass 6.

Applicants hereby elect, without traverse, Group I (claims 1-17 and 36-38) under 35 U.S.C. §121 for prosecution in the present application.

At page 4 on the instant Office Action, the Examiner states that

each Group detailed above reads on patentably distinct Groups drawn to multiple SEQ ID Numbers. The sequences are patentably distinct because they are unrelated sequences and a further restriction is applied to each Group. For an elected Group drawn to amino acid sequences, the Applicants must further elect a single amino acid sequence. For an elected Group drawn to nucleotide sequences, the Applicants are permitted to elect a single nucleic acid sequence.

In this regard, Applicants respectfully invite the Examiner's attention to the policy set forth in 1192 O.G. 68. In accordance with that policy, a reasonable number of sequences are allowed to be claimed in a single application. It has been determined that normally ten sequences constitute a reasonable number for examination purposes and, thus, up to ten independent and distinct sequences are often examined in a single

application without restriction. M.P.E.P. §804.4. In the interest of savings of time and cost to Applicants and the Patent Office, Applicants respectfully request that at least 10 sequences be examined in the instant application.

Furthermore, it is the Applicants' position that, with respect to the claimed nucleotide sequences, a species election for searching purposes would be more appropriate in this situation.

Applicants respectfully submit that a sufficient search and examination with respect to the claimed nucleotide sequences can be made without serious burden on the Examiner. As the M.P.E.P. states:

[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. M.P.E.P. § 803.

Applicants respectfully submit that the searches with regard to each SEQ ID NO. would be co-extensive and would not involve a serious burden on the Examiner. Applicants therefore request that the Examiner re-characterize the restriction requirement with respect to the SEQ ID NOs. as a species election requirement.

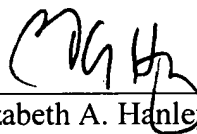
It is the Applicants' understanding that under 35 U.S.C. §121, an election of a single species for prosecution on the merits is required, to which the claims will be restricted if no generic claim is finally held allowable. Applicants submits that claim 1 is generic. Applicants further understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent from or otherwise include all the limitations of an allowed generic claims as provided by 37 C.F.R. §1.41 *et seq.* Accordingly, within Group I, Applicants hereby further elect the species of SEQ ID NO:1, SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:9, SEQ ID NO:11, SEQ ID NO:13, SEQ ID NO:15, SEQ ID NO:17, SEQ ID NO:19, and SEQ ID NO:23 for search purposes only. Applicants even further elect the species of SEQ ID NO:1 for search purposes only.

Applicants reserve the right to traverse the above restriction with respect to non-elected Groups II-IV in this or subsequent applications. *No new matter has been added.*

SUMMARY

If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,



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Dated: **October 25, 2001**